

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2592 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

GULU @ GULAM MAHMAD GULAM HAIDER MOMIN

Versus

DISTRICT MAGISTRATE, AHMEDABAD

Appearance:

MS DR KACHHAVAH for Petitioner

MR SJ DAVE AGP for Respondent No. 1, 2 & 3.

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 11/10/1999

ORAL JUDGEMENT

1. Heard Miss. D.R. Kachhavah for the petitioner and learned AGP Mr. S.J. Dave for respondent nos. 1, 2 and 3.

2. The detention order dated 17.2.99 passed by respondent no.1 - District Magistrate, Ahmedabad in exercise of power conferred by Section 3 (1) of Gujarat

Prevention of Anti-social Activities Act, 1985 (PASA for short) is challenged in the present petition under article 226 of the Constitution of India.

3. The ground of detention supplied to the petitioner under section 9(1) of PASA, copy of which is produced at Annexure :B, inter alia indicate that two criminal cases in respect to offences made punishable under Indian Penal Code are filed against the petitioner and pending for trial in the court. That three prohibition cases registered against the petitioner are also filed and pending for trial in the court. Over and above that, six witnesses on assurance of their anonymity, have supplied information in respect to the anti-social activities of the petitioner. That the detaining authority having considered the said material has come to a conclusion that the petitioner is a "bootlegger" within the meaning of Section 2 (b) of PASA and also a "dangerous person" within the meaning of section 2(c) of PASA. That the resort to enforcement of provisions general law is insufficient to prevent the petitioner from continuing his nefarious anti-social activity. That the petitioner is served with externment notice under Section 59 of the Bombay Police Act, 1951 and Case No. 17/98 was fixed on 30th December, 1998. That the detaining authority has observed that despite the grant of several dates, the petitioner-detenu failed to appear before appropriate authority on 29.1.99, 25.2.99 and 8.2.99. Considering the said fact, the detaining authority has reached to the subjective satisfaction that even if the petitioner - detenu was externed from the local limits of Ahmedabad City and District, nothing would prevent the petitioner from returning to the place of his activities and continuing his anti-social activities. As such, as a final resort, the impugned order is passed.

4. The petitioner has challenged the detention order on numerous grounds. It has been submitted on behalf of the petitioner that the contents of the statements of anonymous witness nos. 3 and 6 as stated in the grounds of detention are not genuine and as such privilege claimed by the detaining authority for the said witnesses under section 9(2) of PASA being invalid, the detention order is rendered illegal. Elaborating the submissions, it is urged at the Bar that the petitioner was apprehended in prohibition case registered vide CR No. 214/98 on 22.12.98 and was in police custody on 23rd December, 1998. That he was released only on 23rd December, 1998. Despite such facts, witness nos. 3 and 6 have stated before the sponsoring authority that the

petitioner had beaten them on 23.12.98 for the cause stated in their statements. That thereby, the statements of anonymous witnesses appear to be either false or got up by the sponsoring authority to involve the petitioner in PASA case.

5. The submissions made on behalf of the petitioner though attractive on the face of it, cannot be sustained on close scrutiny and deserve rejection. It may be noted that the petitioner was released on 23rd December, 1998 on bail in the said Prohibition Case No. 214/98. Thereby, nothing would have prevented the petitioner from picking quarrel with witnesses as stated by witness nos. 3 and 6 in their anonymous statements. As such, the first contention urged on behalf of the petitioner is rejected.

6. It has been urged on behalf of the petitioner that the representations dated 31st March, 1999 made by learned advocate on behalf of the petitioner to the detaining authority as well as Chief Minister were received by respective authorities. However, they have not been considered nor replied to and as such the fundamental right of the petitioner guaranteed under Article 22(5) of the Constitution is violated which has rendered the continuous detention of the petitioner illegal.

7. Despite service of rule, none of the respondents has filed any affidavit-in-reply to the petition and as such, learned AGP Mr. S.J. Dave was not in a position to reply to the contentions. However, on the basis of the instructions contained in original file, learned AGP has stated at Bar that the representation dated 31st March, 1999 sent on behalf of the present petitioner was received by respondent no.1 - District Magistrate on 1st April, 99 and was forwarded to the Chief Minister on 6th April, 1999 and on 9th April, 1999, communication regarding rejection of the said representation was sent to the detainee. However, the learned AGP Mr. Dave could not explain the discrepancies that vide representation dated 31st March, 1999, the petitioner has claimed copies of the report of Chemical Analyzer in respect to prohibition case registered against the petitioner. In the absence of any material placed on record, the logical conclusion would be that the respondents have failed to supply the same as the representation of the petitioner was rejected on 9th April, 1999. It may be noted that in prohibition cases, the report of Chemical Analyzer has been construed as a vital document. That on account of non-supply of vital document, the petitioner-detenu was

prevented from making an effective representation which amounts to breach of constitutional imperative under Article 22 (5) of the Constitution of India and has rendered the continued detention of the petitioner illegal.

8. As the petition succeeds on the above-stated contention, other contentions raised on behalf of the petitioner are not required to be considered and decided.

9. On the basis of the foregoing discussion, the petition is allowed. The detention order dated 17th February, 1999 passed by respondent no.1 against the petitioner is hereby quashed and set aside and the petitioner Gulu @ Gulam Mahmad Gulam Haider Momin is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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